App. F. IX-4

Previous References

1931-32 ( )

File No. 35-31

Serial Nos. 5-

Later References

P. 43

General and Revenue Secretariat.

Serial Nos. 5-1

Part B for July 32

SUBJECT.

Correspondence between the Dewan and Sir Sukhdeo Prasad in the matter of distribution of seats in the proposed Federal Council.

Submitted to His Highness.

I beg to submit for His Highness's gracious perusal the correspondence between myself and Rao Bahadur Sir Sukhdev Prasad, Kt., C.I.E., Prime Minister of Udaipur, in the matter of the distribution of seats in the proposed Federal Council.

Mirza M. Ismail

D E W A N.

Bangalore,)
11th July 1932.)

Record of Cases submitted for the Orders of His Highness the Maharaja.

Subject.

Correspondence between the Dewan and Rao Bahadur Sir Sukhdev Prasad, Kt., C.I.E., Prime Minister of Udaipur, in the matter of distribution of seats in the proposed Federal Council.

No 22
11-7-32

30

Order.

KRW
13/7/32

C: beg
M
14-7-32

MM
14/7/32

PP 35-31-57

General and Revenue
Secretariat.

Correspondence between the Dewan and Rao Bahadur Sir Sukhdev Prasad Kt. C.I.E. Prime Minister of Udaipur, in the matter of distribution of seats in the proposed Federal Council.

(*)

31. All urgent or confidential files returned with His Highness' orders may in the absence of instructions or indications to the contrary, be ordinarily circulated to the Members of Council for perusal after the issue of orders.

33. The Secretaries concerned should see that orders in the cases referred to above are issued at once and that the files are returned immediately after to the Chief Secretary for circulation to the Members.

34. In all other cases, the files will first be circulated to the Members of Council at Headquarters and then sent to the Secretariat concerned for the issue of orders.

Circulated to Members of Council for perusal of His Highness' orders before/after issue of orders.* (*Vide Rules* 31, 33 and 34 of the Subsidiary Rules for the conduct of business of Council in the Manual of Council Rules and Procedure.)

Chief Secretary to Government.

Through the Secretary to Government,

....Department.

357/15/7

FIRST MEMBER OF COUNCIL. 5/7/32

536/15/7

SECOND MEMBER OF COUNCIL. 6-7-32

16/7/32

NOTE.—Contn. sheet

D.O. No. 880

UDAIPUR,
RAJPUTANA.
6th May 1932.

My dear Sir Mirza Sahib

Many thanks for your letter of the 15th ultimo. I had been to Jodhpur on the occassion of His Highness the Maharaja of Jaipur's marriage with the Jodhpur Princess, and hence I could not reply your letter earlier.

I regret very much that I shall not be able to have the pleasure of meeting you at Simla. Owing to advanced age and indifferent health, I can not now undertake long journeys.

I shall feel obliged if you can kindly give me an idea of the constitution of Upper Chamber as evolved by you after consulting the wisest men in Germany.

Bikaner and Jamnagar are probably trying to form a clique to oppose the three leading States of Rajputana, as they did not like to see

these States striking an independent line of action, at Delhi.

With kindest regards &
best wishes

Yours Sincerely

Sinclair

No 3218

14th May 1932.

My dear Sir Sukh Deo,

Many thanks for your letter of the 6th instant.

As desired, I am sending you, under separate cover, a set of printed papers relating to my alternative scheme of a small Federal Council for India. I have placed this scheme before the country from a conviction that it is in its best interests, and I am glad to say that it has met with a large measure of approval.

Yes; Bikaner and Jamnagar have not taken kindly to the plan which the three most important Rajputana States advocate and stand for. That is the main trouble. We are so apt to take too selfish a view of things!

With kindest regards,

Yours sincerely,

(Sd) M. J

The Indian Round Table Conference

SOME SUGGESTIONS ON OUTSTANDING QUESTIONS

BY

SIR MIRZA M. ISMAIL

BANGALORE:
PRINTED AT THE GOVERNMENT PRESS
1932

PREFATORY NOTE

IN these pages, an endeavour has been made to fill in the main gaps in the scheme of an All-India Federation outlined at the Round Table Conference.

The views expressed are the result of much thought and discussion. I trust that the suggestions I have ventured to put forward for the solution of the diverse and indeed, very formidable, difficulties inseparable from the establishment of a democratic constitution for a country like India will receive careful consideration at the hands of both the British authorities and my own countrymen, in the States as well as in the rest of India, especially the suggestion as regards the Upper House.

I feel that such a constitution as is proposed in these pages would be workable in practice and productive of lasting good to India.

MIRZA M. ISMAIL.

Federal Legislature.

THE UPPER CHAMBER.

While recommending that this Chamber should consist of 200 members and that the representatives of the Provinces should be elected by the Provincial Legislatures, the Federal Structure Committee refer (para 12 of the Third Report) to an alternative plan "which would substitute for the Upper Chamber a small body consisting of nominated delegates of the governments of the federating Units, which would have the right of initiating legislation and would be empowered to exercise a suspensory veto over the measures passed by the elected Chamber. This body would also have the right to express its opinion upon all measures of the Federal Government before they were laid before the elected Chamber. The authors of this plan also contemplate the possession by this body of certain advisory functions in the administrative sphere."

This scheme was advocated by me before the Federal Structure Committee and further reflection has only confirmed my belief in its advantages. The Committee considered this to be one of the alternatives, "which clearly demanded further consideration," and in the hope that it may secure such consideration, I reproduce, in the Appendix, extracts from a note on the scheme which was circulated to the Federal Structure Committee and from the comments which I made when it came up for discussion.

Federal Legislature.

THE LOWER CHAMBER.

Total Strength.

The Federal Structure Committee have recommended (para 14 of the Third Report) that the Lower Chamber should consist of about 300 members. They have at the same time taken note of the desire, expressed by some delegates, for a much larger House consisting of 600 to 700 members, so as to provide for the representation of the various interests that might reasonably claim a place. I am, personally, in favour of fixing the strength of the Chamber at 350, and consider that the addition of 50 members to the number recommended by the Committee would be adequate for the purpose of giving representation to the several interests concerned, without making the Chamber too unwieldy in size.

Representation of the States.

On the assumption that the whole body of the States will eventually adhere to the Federation, it has been proposed to allot to them 33⅓ per cent of the total number of seats. This would appear to be fair and reasonable. But the States should not be asked to ear-mark any part of their quota for the representation of the Minorities, a proposal which, as will be shown later, involves some practical difficulties. The States, on the other hand, need not press the claim put forward at the last Conference (para 15 of the Report) that in the event of a large proportion of them not joining the Federation at the outset, the voting strength of those that did join might be correspondingly augmented. An exception has, however,

to be made in the case of groups of States, as it would be unfair if the abstention of some members of a group should involve the denial of representation to the other States in the group which joined the federation (para 16).

Representation of Minorities.

The claims of the Mussalmans, Sikhs and Europeans for representation through separate electorates is generally conceded though, it might be, as a measure liable to reconsideration after the lapse of some years. As regards the other minority communities, however, *viz.*, the Depressed Classes and Anglo-Indians, there is no reason why a system of joint electorates with reservation of seats should not suffice. The Indian Christians do not, in my opinion, stand in need of any special treatment.

Mussalmans.

If the Lower House consists, as is now contemplated, of 200 members for British India and 100 for the States, the Mussalmans would be entitled, on a population basis, to 52 seats out of those reserved for British India, and to 13 of those given to the States. They now ask that these numbers should be raised to 79 and 21 respectively. So far as British India is concerned, practically all sections of public opinion have agreed that one-third of the total number of seats allotted to British India should be reserved for Mussalmans. But in the case of the States, the claim for special representation, and that too with weightage, raises serious practical difficulties. The distribution of the Mussalman population in the States is so uneven, and the number of seats allotted to individual States so limited, that any system of dividing these seats into Mussalman and non-Mussalman would be unworkable. Reservation

would only be possible in cases where a State held two or more seats and contained, at the same time, a substantial proportion of Moslem population. The States in which these two conditions co-exist are few in number. It would not, in these circumstances, be possible to make any stipulation as regards reservation of seats in the States. It would be wiser to rely upon the natural inclinations of the Moslem Rulers of States and the good will of the rest, to return to the House as many Mussalman members as their respective circumstances permitted.

Europeans.

The European Community has claimed 12 seats out of 300 in the Lower House. It must be recognised that, though its population is relatively small, it has great vested interests in the country and requires adequate representation. But the allotment of as many as 12 seats would seem to be excessive; the number may, perhaps, be reduced to four or five.

Sikhs.

The Sikhs have asked that they should be given five per cent of the total number of seats reserved for British India, and this has been agreed to in the Joint Memorandum of the Minority Communities forming Appendix III of the Second Report of the Minorities' Committee. The number of seats to be given to them would accordingly be ten: but as this would be out of all proportion to the strength of the community, it is suggested that the allotment may be reduced to five or six seats.

Depressed Classes.

So long as these classes remain within the Hindu fold and endeavour to attain a higher status

therein, there is no reason why separate electorates should be provided for them. It is by increased association, politically and otherwise, with the other sections of the Hindu population that "untouchability" can most effectually be removed. But although it is appropriate and desirable that they should vote in joint electorates, it must be recognised that, under present conditions, they may not be able to secure effective representation in the Houses of Legislature unless a minimum number of seats is guaranteed to them. But the reservation need not be on the basis of population, even if the population of the Depressed Classes was a readily ascertainable figure. The Simon Commission have observed, that "on the question of the number of the Depressed Classes, conflicting estimates have been made from time to time by various authorities. The variation in the figures arises largely from a difference in the meaning and application given to what is at all times rather a vague term."

According to the estimate of the Simon Commission, the population of the Depressed Classes is about 43·6 millions and the reservation of 20 seats for them would seem to be sufficient at least for the present. If the full number is not returned by the general electorates, the deficiency may be made good (1) by election of members by recognised Associations representing the Depressed Classes and (2) in the last resort, by nomination by the Governor-General. A system of election supplemented by nomination on these lines has been in force in the Mysore State for some years and has been found to be workable and satisfactory.

Anglo-Indians.

Three seats were claimed for this community in the Memorandum already referred to. But considering its small population, it is doubtful whether it

can reasonably be allotted more than one, or at the most two seats.

Indian Christians.

Important sections of Indian Christians do not ask either for separate electorates or for reservation of seats, both of which imply, in the case of this advanced community, a limitation of opportunities rather than a privilege.

Federal Legislature.

DISTRIBUTION OF SEATS BETWEEN THE STATES.

The Federal Structure Committee considered (para 26 of the Report), "that the best course would be to allow a period of time which should not, they think, extend beyond the end of March 1932, within which the Princes should be invited to arrive at a settlement, on the understanding that, if within that period a settlement were not in fact secured, an impartial tribunal would be set up by His Majesty's Government to advise as to the determination of the matter." As was foreseen at the time, no agreement has been reached among the States on this important question, and although the stipulated period will expire within a few weeks, no sort of solution has, as yet, been even formulated. It becomes, therefore, necessary for those of the members of this Committee who are interested in the question to put forward their views, if only for the purpose of eliciting discussion and helping towards a timely settlement. It is in this view that I offer the following observations.

General Principles.

The distribution should be made mainly on a population basis. The political importance of a State (as represented by the number of salutes given to its Ruler, otherwise than as a personal distinction) may be taken into consideration, only for the purpose of judging whether it should be allotted a seat individually, when it does not fully satisfy the population test, although approximating to it. Political and historical considerations may thus be

useful in settling cases on the borderland, but cannot be employed as the primary criterion.

It is generally agreed that the States should be allowed some weightage in both the Chambers. Some of the bigger States might be induced to pass on the weightage given to the States as a body, in favour of the smaller States, but cannot be expected to give any additional weightage themselves. They cannot, in any case, be asked to be content with a smaller quota than Provinces with a comparable population are likely to obtain.

Working Rules.

The ratio of population per seat, according to the Federal Structure Committee's Third Report, would be as follows:—

Upper House.

A.	British India	...	1 seat per 2·14 millions of population.
B.	States	...	1 seat per 1·01 millions of population.
C.	Average of A and B	...	1 seat per 1·57 millions of population.

Lower House.

A.	British India	...	1 seat per 1·28 millions of population.
B.	States	...	1 seat per 812,370 of population.
C.	Average of A and B	...	1 seat per 1,046,000 of population.

In the allotment of three or more seats to a State, A may be taken as the ratio of population per seat. C may be similarly used in allotting two seats to a State. Individual representation with a single seat may be allowed to States whose population does not fall short of the minimum standard B.

Grouping.—For the remaining States, a system of grouping is inevitable, and a combination of three methods, as shown below, is suggested in this connection :—

(1) Small groups of two or three States with approximately equal population which, in the aggregate, make up one unit of standard B. Each of the States thus grouped might send a representative by rotation.

(2) Larger groups of States on a regional basis, and

(3) a residuary group of States which do not fit in anywhere else.

Each of the groups (2) and (3) would collectively return the number of members allotted to the particular group on a population basis.

Distribution of Seats in a Federal Council.

If it be decided to constitute the Second Chamber as a Federal Council, the principles of allocation laid down above will require modification.

For one thing, there will be no room for plural seats for any State.

Secondly, any large grouping of States would fail to produce the type of person desired, *viz.*, a delegate acting under the mandate of his Government. But in order to satisfy the majority of States which would resent being left out altogether, a certain amount of grouping cannot be avoided but the number of seats allotted to the group or groups should be as few as possible.

The bulk of the seats (about 16 or 17), should be allotted to the States individually, in the order of their population.

States which cannot obtain individual representation should be allowed to send delegates to speak in the Council (without voting) on any subject in which they may be specially interested, the degree of interest which would justify such participation being a matter for the President of the Council to determine.

The Federal Executive

During the period of transition, the Governor-General has to sustain a double rôle. He has to act (1) as the agent of the Crown in regard to Defence, Political relations with Indian States and External Affairs, and (2) as the constitutional head of the executive in respect of Federal subjects. This duality of functions would be reflected in the choice of his advisers and their tenure of office, and in the content and mode of exercising his own powers.

Two Ministers for the administration of the Crown subjects would seem to be sufficient. They would be appointed by, and be responsible to, the Governor-General, and would hold office only so long as they possessed his confidence. They would administer, under his control, the reserved subjects and would be his spokesmen in the Legislature.

As regards the question whether the selection of these members should be confined to Indians or to members of the Legislature, I am inclined to the view that, in the beginning, at any rate, the Governor-General may be allowed full discretion in this matter.

The Prime Minister would be the leader of the Party that had the largest following in the Lower House. He would have the right of nominating his colleagues, subject to the approval of the Governor-General, and of demanding their resignation or dismissal, if necessary. The Federal Ministry would consist of six members, to administer the several departments subject to the control of the Legislature. There might be, in addition, a Minister without a portfolio, who would act as " Leader of the House."

The two sections of the Federal Ministry would ordinarily deliberate apart from each other. But

joint consultation between them should be possible, and may be expected, in course of time, to become the normal procedure either by—

(i) the Governor-General inviting the Federal Ministers for consultation; or

(ii) the Prime Minister asking the Crown Ministers to participate in the deliberations of the Federal Cabinet.

In either case, advisory participation in each other's sphere would be "without prejudice." The Crown Members would not take responsibility for the actions of the Prime Minister and his Parliamentary colleagues or *vice versa*. A vote of no confidence in the Federal Ministry would not lead to the resignation of the Crown Members, who owed their appointment and their loyalty exclusively to the Governor-General.

The idea that all the Ministers should go out together on such a vote, while the Crown Ministers could be, and as a matter of routine were, reappointed to their places, would be to introduce a fiction of joint responsibility, for which there is no analogy or practical justification.

The powers of the Governor-General as regards Crown subjects would be as extensive as they are at present. The only restriction on these powers would be the obligation to limit (save in national emergencies) expenditure on Defence and External Affairs within the contract grant allotted for these purposes.

In the sphere of Federal subjects, generally, the powers of interference of the Governor-General would be restricted to the specific purpose of enforcing the safeguards laid down in the constitution, and would ordinarily take the form of veto on any proposals likely to affect the protected interests prejudicially.

Fundamental Rights.

The representatives of the minority communities, organized labour and Indian women, as also the States' people, have asked for a declaration of fundamental rights as a part of the new Constitution of India. The rights which it is thus sought to protect, as will be seen from the memoranda circulated by the representatives of the various interests, cover a wide field and make a formidable catalogue.

From the days of the French Revolution, it has been the fashion with constitution-makers to incorporate a declaration of their political creed in the fundamental laws of their country. Latterly, economic and social rights have been brought within the scope of such declarations. But in most cases, as pointed out by Sir P. S. Sivaswami Iyer, "the declarations are in the nature of mere moral or politico-ethical or legislative maxims which have no claim to be treated as rules of positive law. This characteristic of the declarations is being more and more recognized by the framers of constitutions in Europe. Moreover, if these declarations are treated as they should be, as devoid of any legal content, they are merely illusory safeguards of rights. If, on the other hand, they are treated as having the force of law and as not liable to change by the ordinary legislature, they are sure to interfere with the working of the ordinary legislature and to hamper the passing of legislative measures, which may be found to be called for in the interests of the safety of the State."

What is now urged is not only that a declaration of rights should be made in the constitution but that some effective means of enforcing them should be provided, *viz.*,

(*a*) by vesting in the Governor-General (or Governor) the power to withhold assent to any legislation which might infringe fundamental rights;

(*b*) by making any act or omission calculated to prevent full enjoyment of such rights an offence punishable by law; and

(*c*) by giving a right of appeal to the Governor-General (or Governor) "for redress of prejudicial action or neglect of interest by any executive authority."

If these suggestions were accepted, the scope for outside interference in legislative, fiscal and administrative matters would be so greatly extended as to make responsible Government impossible.

This difficulty was felt by the Government of India who, at page 45 of their Despatch on Constitutional Reforms, referred to it as follows:—

"If they (the rights) were expressed as so many general political maxims, they are unlikely to serve the purpose for which they are framed. On the other hand, at first sight, there seem to us to be objections to making at least some of such rights justiciable. If administrative decisions of all kinds can be taken to the Courts, grave disadvantages and embarrassments may be expected to ensue. There may, however, be a *via media* between these two alternatives."

The following suggestions are made as pointing to a possible middle course:—

(1) If a declaration of rights is to be made in the constitution, it should be confined to those rights which are really fundamental and well recognised. It should not seek to embody disputed principles or to lay down extensive programmes of social reform. The following statement (wherein the phraseology of the Nehru Constitution is generally adopted) may perhaps be sufficient for the purpose.

> No person shall be deprived of his liberty nor shall his dwelling or property be entered, sequestered or confiscated, save in accordance with law.
>
> Freedom of conscience and the free profession and practice of religion are, subject to public order or morality, hereby guaranteed to every person.

The right of free expression of opinion, as well as the right to assemble peaceably and without arms, and to form associations or unions, is hereby guaranteed for purposes not opposed to public order or morality.

All citizens are equal before the law and possess equal civic rights.

There shall be no penal law whether substantive or procedural of a discriminative nature.

No person shall be punished for any act which was not punishable under the law at the time it was committed.

No person shall by reason of his religion, caste or creed be prejudiced in any way in regard to public employment, office of power or honour and the exercise of any trade or calling.

No person shall merely by change of faith lose any civic right or privilege or be subject to any penalty.

All citizens have an equal right of access to, and use of, public roads and all other places of public resort.

Freedom of combination and association for the maintenance and improvement of labour and economic conditions is guaranteed to everyone and of all occupations. All agreements and measures tending to restrict or obstruct such freedom are illegal.

Men and women shall have equal rights as citizens.

(2) It may be assumed that these principles would be habitually respected by the Legislatures of the country. But as the Minority Communities attach great importance to the need for some constitutional machinery to protect their special rights, the following modification of the procedure suggested by them may perhaps be considered :—

If a bill is passed by the Federal Legislature or by a Provincial Legislature, which in the opinion of one-third of its members representing a particular community affects their religion or social practice based on religion, it shall be open to such members to lodge their objection, within a period of one

month of the Bill being passed, with the President of the House, who shall forward the same to the Governor-General or Governor, as the case may be. The latter shall obtain the decision of the Federal Court on the validity of the objection and shall give or withhold his assent to the measure, in accordance with such decision. If an enactment has received the assent of the Governor-General or Governor, it should no longer be open to question in any Court of Law on the ground that it conflicted with a fundamental right.

(3) It is obvious that any declaration of rights made in the Constitution will have no application to the States outside the federal sphere. They may be left to frame their own Declarations of Rights, according to their special needs and circumstances, following the general model set in the Act of the Constitution.

Safeguards.

In the declaration of policy made by the Prime Minister at the conclusion of the First Round Table Conference and reaffirmed at the Second Session, he made it clear that the statutory safeguards to be made would be, "for meeting the needs of the transitional period" and that it would be "a primary concern of His Majesty's Government to see that the reserved powers are so framed and exercised as not to prejudice the advance of India through the new constitution to full responsibility for her own Government." The same sentiment was expressed by Sir Samuel Hoare more recently, when he said in the House of Commons that, "these safeguards are not shackles upon India's future. They are rather stays without which the new Indian Constitution will lack the sure and safe stability that it will so much need."

These declarations by British statesmen of such eminence and sincerity of purpose should dispel any misgivings as to the real intentions of the British nation. For our part, we must not fail to recognise that some sort of safeguards are, in the present conditions of the country, unavoidable. The practical task for us, therefore, is to explore (1) what should be the scope of the safeguards and (2) how long they should be maintained.

DEFENCE.

In my opinion, it would not be impossible to fix a definite period, say, 15 or 20 years, at the end of which the control of the army, vested in the Governor-General, should pass to Ministers responsible to the Indian Legislature. It is only by giving some definite-

ness to the contemplated period of transition that Indian opinion can feel reassured that the promised status of full responsibility is no illusory or remote prospect.

Subject to the above observations, I generally adhere to the conclusions so far reached by the Conference, *viz.*,—

(1) that during the period of transition the responsibility for Defence should rest with the Governor-General;

(2) that he should be given unfettered discretion to choose his Defence Minister, leaving it to time and circumstances to develop a convention limiting the choice to Indians or to members of the Indian Legislature;

(3) that the maximum expenditure incurred on defence services should be settled periodically and in mutual discussion between the representatives of the Crown and the Legislature;

(4) that having regard to the principle that "the defence of India must, to an increasing extent, be the concern of the Indian people and not of the British Government alone," the existing opportunities of the Legislature for discussing and influencing military policy should undergo no diminution but, on the other hand, should be progressively broadened;

(5) that Indianisation of the forces should be accelerated to the fullest extent possible; and

(6) that a Military Council, including representatives of the States, should be set up.

EXTERNAL RELATIONS.

I accept generally the position as stated in paras 11 and 12 of the Fourth Report of the Federal Structure Committee but would emphasise (1) that as in the case of Defence, the control of external relations by the Governor-General should be for a defined period, which need not exceed 15 to 20 years and (2) that responsibility for commercial relations with the British Dominions and Foreign countries and control over consular services should remain with the Federal Ministers.

FINANCIAL SAFEGUARDS.

Supply should be guaranteed for the service, and eventual repayment, of public loans raised by the Secretary of State for India and for the administration of the Reserved subjects. The Governor-General should also possess the requisite emergency powers in order that he may discharge his responsibilities. Beyond this, however, the control of the Legislature over financial policy and administration should remain unfettered. The establishment of a Reserve Bank and of a Council of Currency experts may be desirable measures in themselves, but it is for the future Federal Legislature to decide what financial checks it will, as a matter of common prudence, impose on itself and its Executive. With nearly two-thirds of the annual revenues hypothecated for the service of the Reserved Departments and public debt, the sphere of finance left to the Legislature would, in any case, be comparatively limited. To impose restrictions on its powers even within this narrow sphere would be to create in the Legislature the very spirit of irresponsibility which it is sought to guard against.

APPENDIX

A Note on the constitution of a Federal Council for India.

By Sir Mirza Ismail.

The main suggestions of (the second) report of the Federal Structure Committee were :—

(1) The Federal legislature to consist of two Houses ; the component elements of the Federation to be represented in both Houses, joint sessions being held whenever differences of opinion between the two Houses arise.

(2) The Executive to be responsible to the Legislature.

(3) Reserved subjects and safeguards in financial matters.

The legislature, as proposed by the Federal Structure Sub-Committee, has the appearance of a bi-cameral legislature, but it is not really so. It will function as a uni-cameral legislature—an unnecessarily unwieldy one of some 600 or 700 members—on all occasions when a difference of opinion arises between the two Houses.

The question is whether such a constitution is likely to work smoothly and effectively, and suit the needs of a vast and heterogenous country. Experience has shown that in many Federal constitutions, Senates with concurrent powers have failed to justify their existence. No nation has been successful in constructing a body representing the Federal element in an effective, because undiluted, manner. The fault lies in the fact that nowhere have the States forming the federation been entrusted with co-operation in the work of the Central Government. In all constitutions, the second Chambers have been made directly or indirectly representative of the parties in

the federating units, who are already enabled to send their representatives to the Popular House. Thus, the political factor, namely, the people, is doubly represented, once in the Popular House and again in the second Chamber, even though its representatives are elected indirectly by the parliaments of the States. This is the considered opinion of some of the most eminent jurists of our day, and based not only on a profound and extensive study of constitutional law and practice in all countries of the world, but also upon actual experience of the practical working of a Senate in modern Federal States.

Would India do wisely to disregard the lessons of experience, and embark upon her great experiment without taking such facts into consideration? The writer believes it to be possible to devise a constitution which will provide for, and remedy, this serious defect. He asks for consideration of the following plan.

The two principal organs of the Federal State of Greater India would be:—

(1) A popular House which may be described as the Federal Assembly; and

(2) Another body which may be described as the Federal Council.

The Federal Assembly will consist of representatives chosen by direct and indirect election, preferably by both methods, the representation being more or less on a population basis. The number may be fixed at 300-350, the proportion of the members from the States being 33⅓ per cent of the total strength. As regards the method of election, the suggestion made by Mahatma Gandhi, of villages sending their elected representatives to an electoral college to vote on their behalf, is likely to secure the best results, and is plainly more practical than the ordinary method of a direct vote.

As the Federal Council is to be that organ of the Federal Government which upholds the federal character of the Constitution, it would be composed of delegates appointed by the Governments of the States and Provinces. The smaller the number of its members, the more capable it will be of doing effective work.

Unless the representatives composing the Federal Council are chosen in some way by the Governments of the units, the Constitution will still be that of a unitary State, as the federal elements will be lacking. For this reason, the members of the Federal Council should be appointed by the Governments of the States and Provinces at their own discretion and exclusively with reference to their expert knowledge. The representatives must vote and act according to the instructions which they receive as agents of their Governments. Plural votes of a State or a Province must be given uniformly. The Federal Council may consist of 60 members, of whom at least 40 per cent should be from the States.

The Central Government must be represented in the Federal Council in order to safeguard the co-operation of the supreme federal authorities and to prevent the various elements in the Council from working on parallel lines or against each other.

Legislative Powers of the Federal Council.

The Federal Council would have a suspensory veto on laws passed by the Federal Assembly with which it did not agree.

If the Federal Council exercised its right of veto, the Federal Assembly would then have to show a qualified majority, *i.e.*, a two-third or three-quarter majority, for its resolution. The right of veto would have to be exercised by the Council within an adequate period to be determined by the Constitution.

Bills prepared by the Federal Executive would be laid, first before the Federal Council, and after having passed this body, before the Federal Assembly. If the Federal Council wished the Bills to be altered, the Federal Executive could modify the draft. If it did not do so, the Federal Council should have the right of adding to the draft its own dissenting opinion, on passing the Bill on to the Federal Assembly.

Besides the right of considering Bills introduced by the Executive, the Federal Council should share with the Assembly the right of introducing Bills.

Executive Functions of the Federal Council.

In accordance with the nature of the Federal Council as the specifically federal organ of the Indian Federal State, it should be in possession of certain powers with regard to the Federal Executive. Its co-operation in this sphere can, however, only be of an advisory nature, if it is not to restrict the Federal Executive unduly in the fulfilment of its task of government. The Federal Council might enjoy the right of demanding reports concerning current administrative matters from the Executive, and information regarding the preparation of future Bills.

The Federal Council, moreover, might have a right of co-operation in certain administrative matters, *e.g.*, external relations, like the Senate of the United States of America. Or, for example, the Federal Council might have a right to propose appointments to certain high official posts. The Government would not be rigidly bound by such proposals. In practice, however, the Government would presumably adopt them, unless there were any special objections.

The following are among the advantages of constituting the Upper House in the manner proposed :—

(1) It will be of a manageable size, and therefore better adapted for despatch of business and more economical in working than a larger body composed of some 250

or 300 members. It will cost less: it will attract better men without unduly depleting the Provincial and State Legislatures.

(2) The members being selected with reference to their expert knowledge will be comparatively free from party influences, will be more "federally-minded" and less bound up with local and sectional affiliations.

(3) The points of view of the Governments of the units will find timely and authoritative expression in the Council, and the occasions for conflict between these Governments and the Central Executive will be avoided or reduced to a minimum.

(4) The objections of British India in regard to powers of financial control of the Upper House will be obviated.

(5) As the Council will be invested only with a suspensory, and not an absolute, veto in Legislation, British India should have less hesitation in giving even 50 per cent representation to the States in such a body.

(6) On the other hand, as an offset to its slightly inferior status in legislation, the Council will have large powers of initiative, the right of association with the Executive in certain administrative matters, and advisory influence in all matters of policy which concern the States and the Provinces. In these important functions, the States and British India will share equally.

(7) The scheme will allow of States sending delegates to address (without voting in) the Council on matters in which they may be specially interested. This should be an acceptable concession to those States which cannot hope for individual representation.

Extract from the Proceedings of the Federal Structure Committee—2nd November 1931.

Remarks of Sir Mirza Ismail on paragraph 12 of the (draft) Third Report.

In the draft report before us, it is proposed that the Federal legislature should consist of two Houses, namely, a Lower House composed of 300 members,

of whom 200 would be elected under a system of direct or indirect election, while the rest would be chosen by the States; secondly, an Upper Chamber of 200 members elected by the provincial legislatures or appointed by the States. We shall thus have two bodies, both somewhat unwieldy in size, and little differentiated from each other in composition, and therefore in outlook. It may perhaps be pointed out that additional qualifications are proposed for membership of the Upper House; but it is doubtful if these will ensure its becoming, any more than the Lower House, a body of weight, experience and character, as we visualize it, or attracting a different type of personnel. The probability is that it will only become a replica of the Lower House.

I am quoting from Marriott: "Experience has shown that disputes between the two Legislative Chambers. . .have been most frequent and most bitter in the Upper Houses which are constituted on an elected basis." The elaborate provisions contained in certain constitutions for removing deadlocks between the two Chambers are an eloquent commentary on the characteristic defects of this form of legislative organisation.

Lack of adequate differentiation between the two bodies would be a serious defect even in a unitary constitution; in a Federal scheme, such as that we are trying to devise, it would be fatal. The component elements of the Federation would have no representation as such in the Upper House, which is pre-eminently the Federal organ of the constitution and "the pledge of the security of State rights."

The draft Report recognises the principle that the Upper Chamber should in the main represent the units as such (paragraph 22); and speaks of its members as being, in a special sense, the representatives of the Federal Units (paragraph 42). But it is obvious that it is only to the members from the Indian States that such a description could be correctly

applied. The members from British India would not be regarded as the representatives of their Provincial Governments, which might have changed, or of their provincial legislatures, which might have been dissolved, after their election as members of the Upper Chamber.

It is in this view that I have been urging the need for a second Chamber, composed exclusively of delegates selected by, and representative of, the Governments of the Federation and of the units; and I would earnestly plead for due consideration to be given to this suggestion before the scheme tentatively outlined in the draft Report is adopted. I am happy to think that the change can be super-imposed upon the plan of Federation we have so far formulated without injuring the general framework and also without delaying the building of the structure.

One of the advantages of this proposal which has impressed me, and which will no doubt appeal to some other members of the Committee also, is that it will obviate dissimilarity of methods between British India and Indian India, in regard to the selection of members for at least one of the Houses of the Federal Legislature.

It is of the utmost importance that the Federal machinery should function effectively. It would be a disaster if at some early stage the system broke down and delayed the up-building of a really united India. I feel that there should be no hesitation in agreeing to such a revision if, as I venture to think, there is sufficient reason for doing so.

I daresay many of us have read a special article which appeared in "The Times" of October 23rd entitled "Australia as a Unit." The experience of that country, which is administered under a Federal constitution, is of special significance to a Conference engaged in divising a similar system for India. They have come to realise in Australia the vital importance of close co-operation and concerted action on the part

of the Governments of the federated units in all matters in which the country as a whole is interested. They have been forced to this in the hard school of experience, and especially during recent years of economic difficulties. The story is so pertinent that I beg leave to quote from it:—

"Each of the other States also, New South Wales, Victoria and South Australia, although they were near enough to have similar interests, cherishes individuality; State feeling has not diminished with Federation, but has, on the contrary, established itself as a characteristic of Australian life. An Australian is a Victorian or a New South Welshman first, and an Australian only second."

"A Royal Commission on the Constitution was appointed by Mr. Bruce, and reported later in 1929. They declared that the advantage of having strong, self-governing States which could appeal to the local patriotism, knowledge and public spirit easily outweighed the admitted inconveniences. The events of the intervening years have shaken this argument. It would be surprising, however, if it were still not strong enough to defeat Mr. Scullin's scheme" of transferring the power of amending the Commonwealth Constitution from the people to the Federal Parliament. "But the chief hope for the survival of federalism is that, in a way characteristic of British political institutions, a *modus vivendi* involving no changes whatever is in sight. . .The Royal Commission recommended several means for co-ordinating States and Commonwealth action, but it referred to the Premiers' Conference, which was largely the creation of Mr. Bruce, merely as a useful body for this purpose. It could not foresee the great and decisive part which the Conference, as an institution was to play in the crisis of the next two years. So valuable an addition to the governmental machinery is not likely now to be discarded. The difficulty of obtaining joint action is the burden of the case against federalism. It would seem to many a mistake to apply too drastic constitutional amendments before at least another means, which offers the main advantages of unification without the objections, has been thoroughly tried."

It will be seen that the problem in Australia was how to arrest the tendency to extreme provincialism so manifest in that country, while on the other hand ensuring the survival of federalism which is recognised as the only possible form of government in a Commonwealth which has such strongly marked diversities of interest and differences of outlook between its constituent units.

I need scarcely say how much more necessary it is in India, with her far greater diversities, that the Provinces should be kept together.

It will be seen from the extract that the Australian Commonwealth, in the endeavour to overcome the difficulties arising from inadequate means of ensuring joint consultation and action such as that for which I plead, has had to devise measures which, though in no sense illegal, are outside the constitution. Let us not put aside the lessons of experience by agreeing to a constitution having the serious defects to which I have called attention—a constitution which, I venture to think, would be neither sound in theory nor effective in practice.

~~D.O. No....~~

Private

UDAIPUR,
RAJPUTANA.
25 May, 1932.

C. Leg / for favour of 4 copies of my speech / 31/5

My dear Sir Mirza Sahib

Please accept my best thanks for the two printed copies of your instructive notes on the Federal Structure.

2. For the Federal Council, the strength proposed is 60 seats and out of it we are to get 24.

3. I think, every one ought to agree that on score of economy and efficiency, the smaller the number the better it is. But if we consider the practical side there appear two serious objections i.e., one from the Indian States and the other from the British India, viz,

(1) for securing a seat the scramble amongst the States would be keen and bitter. The number is so limited that it will not satisfy the majority

(2) It is more serious for Br India. We leave 36 seats for British India and Central Government. Suppose

the Central Government gets 6 seats it would leave only 30 to British India. Can we say with a clear conscience that a unit which represents -- three-fourth on population basis and probably -- seven-eighth on monetary contribution basis, shoul only have compared with us, representation in the Council at a proportion of,

States : British India :: ~~5~~ ~~4~~ 4 : 5

Sir Mirza Sahib, please carefully note the proportion and be a little more just and generous.

4. It may be said that in the Assembly, British India ~~had~~ will have its adequate representation and so should rest content with the seats we offer them in the Council, but it is a proposition that can be well disputed.

5. I have been watching Sir Ranjeet's career from the time he had been a claimant to the Jamnagar Gadi and Sir Ganga Singh had been my life-long neighbour. Both of them are sur-charged with egotism and a good deal of craft.

6. They never mean what they say. They are very glib in tongue and no less facile in pen. They loudly proclaim on the house-top that they are -- whole-heartedly yearning for Federation, while the

terms they propose are not at all helpful to -- attain that end. Fedral Government, if it is to be a live body, must be invested with some powers, and these powers are to come from Federating Units. But Bika Jam & Co. are not prepared to yield on this point. They think that it offers them a high time to set an unreasonable price for their consent to join the Federation, and their price, if granted, means crippling Federation to inefficiency. However, it is hoped that the British statesmen, though lavish in extolling these magnates to the sky, will not fail in forging a constitution that may be lasting, practical and efficient, and reduce the much-talked-of safe guards to reasonable limits.

7... It is needless for me to say that the remarks offered above are purely in a friendly spirit.

With sentiments of esteem
& regards

Yours Sincerely
Subedar

D.O. 3462
Enclosure.

Mysore,
6th June 1932.

My dear Sir Sankaran,

Thank you for your letter of the 25th May, expressing your views on the composition and the strength of the Federal Council.

The scramble for seats in the Federal Council and the consequent discontent among the States cannot be avoided, unless all the 562 States are given individual representation. This being obviously impossible, some system of grouping is inevitable, and the large majority of the smaller States will have to rest content with representation through regional groups. Paradoxical as it may sound, the smaller the number of seats, the less will be the discontent.

The number of seats that I suggested before, viz., 24 for the States and 36 for British India was based on the recommendation of the Federal Structure Committee that the representation of the States in the Upper Chamber should be in the proportion of 40 per cent.

If six seats are, in addition, reserved for the Federal Ministers, two of whom possibly may be the representatives of the States, the total allotment will be in the proportion of 26 : 40, which does not materially differ from the recommendation of the Federal Structure Committee.

With the 24 seats allotted to the States, it is possible to effect a distribution, by which some 16 States of importance, comprising nearly two-thirds of the total population of the States as a whole, would get individual representation. The remaining 8 seats would be filled up by representatives returned through regional groups.

British India, too, will have no reason to complain. The 36 seats allotted to the Provinces will not only give

individual representation to all of them, with plural votes to the more important Provinces, but will even allow a margin for nomination by the Crown of some six members so as to secure the services to the Council of persons of the elder Statesman type. Such nomination may seem to militate against the strictly federal character of the Council, as representing the Governments of the federating units, but it gives expression to a principle which, I know, has many advocates in British India.

The details of this scheme are given in the appendix and I shall be glad to have your further opinion on the same.

With kind regards,

Yours sincerely

Sd. Mirza M Ismail

Rao Bahadur,
Sir Sukhdeo Prasadji, Kt., C.I.E.,
Prime Minister,
Government of Mewar,
UDAIPUR. (Rajputana).

Appendix A.

The Federal Council will consist of 66 members, in which the allottment of seats to the States and the Provinces will be 24 and 36 respectively. The six remaining seats will be reserved for the representation of the Federal Government.

The following more important States will get individual representation with a single seat each:-

1. Hyderabad.
2. Mysore.
3. Travancore.
4. Kashmir.
5. Gwalior.
6. ~~Mewar.~~ (Udaipur)
7. ~~Marwar.~~ Jodhpur
8. Jaipur.
9. Bikanir.
10. Cochin.
11. Bahawalpur.
12. Patiala.
13. Indore.
14. Kolhapur;
15. Rewa.
16. Baroda.

Please arrange in order of precedence

The total population of these States is 50.691 millions. The remaining 8 seats will be available for distribution among the remaining States with a total population of 30.546 millions. These States which cannot obtain individual

representation may be grouped as follows on a regional basis:-

1. States of Baluchistan, Punjab, North-West Frontier Province and Tehri Garhwal.
2. States in Central India, Central Provinces and Benares.
3. States in Bihar and Orissa, Bengal and Assam.
4. Rajputana States with Rampur.
5. Kathiawar and Cutch.
6. Bombay and Madras States.

Each of these groups will be entitled to send a single representative, with the exception of groups 2 and 3, which in view of a large number of States grouped in them, may perhaps be given 2 representatives each.

The following will be the allottment of the 36 British Indian seats, to the Provinces inter se

CLASS I.

Madras. Bengal. United Provinces. Bihar and Orissa.	4 Seats each.

CLASS II.

The Punjab Bombay.	3 seats each.

CLASS III.

Central Provinces. Assam. North West Frontier. Sind Delhi. Ajmer Merwara. Coorg. British Baluchistan.	1 seat each.

Total. 30 seats.

The remaining 6 seats will be reserved for nomination by the Crown.

DEWAN'S OFFICE
5. JUN. 1932

(My dear Sir Sukhdeo (~~Prasadji~~)

Thank you for your letter of the 25th May expressing your views on the composition and the strength of the Federal Council.

The scramble for seats in the Federal Council and the consequent discontent among the States cannot be avoided, unless all the 562 states are given individual representation. This being obviously impossible, some system of grouping is inevitable, and the large majority of the smaller States will have to rest content with representation through regional groups. Paradoxical as it may sound, the smaller the number of seats, the less will be the discontent.

Sabd for consideration
Dewan) 4/6/32

The number of seats that I suggested before viz., 24 for the States and 36 for British India was based on the recommendatio of the Federal Structure Committee that the representation of the States in the Upper Chamber should be in the proportion of 40 per cent.

If six seats are, in addition, reserved for the Federal Ministers, two of whom possibly may be the representatives of the States, the total allotment will be in the proportion of 26 : 40, which does not materially differ from the recommendation of the Federal Structure Committee.

With the 24 seats allotted to the Sta it is possible to effect a distribution, which some 16 States of importance, co

nearly two-thirds of the total population of the States as a whole, would get individual representation. The remaining 8 seats ~~will~~ would be filled up by representatives returned through regional groups.

British India, too, will have no reason to complain. The 36 seats allotted to the Provinces will not only give individual representation to all of them, with plural votes to the more important Provinces, but will even allow a margin for nomination by the Crown of some six members so as to secure the services to the Council of persons of the elder Statesman type. Such nomination may seem to militate against the strictly federal character of the Council, as representing the Governments of the federating units, but it gives expression to a principle which I know has many advocates in British India.

The details of this scheme are given in the appendix and I shall be glad to have your further opinion on the same.

With kind regards,

Yours sincerely,

(Dewan.)

Rao Bahadur
Sir Sukhdeo Prasadji, Kt., C.I.E.

Private

GOVERNMENT OF MEWAR
UDAIPUR RAJPUTANA

Shanti Kunj
Mt. Abu.
Dated 19th June 1932.

~~UDAIPUR~~,

~~RAJPUTANA~~

C/S-3169

My dear Sir Mirza Sahib

DEWAN'S OFFICE
Memo
856
25 JUN. 1932

Many thanks for your letter of the 6th which I could not reply earlier as it was redirected from Udaipur and reached me the other day.

You have been good enough to explain the cogent reasons on which your proposals are based. I have only one suggestion to offer. It is that in the number of important States held eligible for individual representation the important group of Khatiawar should also be given one seat say Cutch or Junagarh; preferably the latter, as it would then raise the number of Mahamadan States to three instead of two amongst the sixteen and satisfy an important regional group. To keep the number at 16, Bikaner may be dropped as

as Rajputana will still have 3 seat viz Udaipur, Jodhpur and Jaipur.

Yours Sincerely

Sukhdev